

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

OSI Education Services, Inc.,

Civil No. 07-3508 (DWF/SRN)

Plaintiff,

v.

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

Ikechi Kallys Albert,

Defendant,

v.

OSI Education Services, Inc.;  
Great Lakes Higher Ed. Guaranty Corp.;  
Erstad & Riemer, P.A.; Kevin Burke;  
State of Minnesota; Hennepin County  
District Court, Fourth Judicial [Sic],

Third-Party Defendants.

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Ikechi Kallys Albert, *Pro Se*, Defendant.

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This matter is before the Court on Defendant Ikechi Kallys Albert's objections to Magistrate Judge Susan Richard Nelson's Report and Recommendation dated September 28, 2007, recommending that: (1) this action be remanded to state court; and (2) Defendant's IFP application be denied as moot.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.1(c). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference

for purposes of Plaintiff's objections.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

### **ORDER**

1. Defendant Ikechi Kallys Albert's objections (Doc. No. 5) to Magistrate Judge Susan Richard Nelson's Report and Recommendation dated September 28, 2007, are **DENIED**.

2. Magistrate Judge Susan Richard Nelson's Report and Recommendation dated September 28, 2007 (Doc. No. 4), is **ADOPTED**.

3. This action is **REMANDED** to state court.

4. Defendant's IFP application (Doc. No. 1) is **DENIED** as moot.

Dated: November 13, 2007

s/Donovan W. Frank  
DONOVAN W. FRANK  
Judge of United States District Court

### **MEMORANDUM**

A primary objection of Defendant Ikechi Kallys Albert to Magistrate Judge Susan Richard Nelson's Report and Recommendation dated September 28, 2007, is that Defendant did not consent to the Magistrate Judge's authority over this matter.

Pursuant to 28 U.S.C. § 636(b)(1):

a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.

By this authority, the Magistrate Judge did not need Defendant's consent in order to determine, *sua sponte*, whether the Court had removal jurisdiction over this matter.

Regardless, this Court has reviewed the matter *de novo* and agrees with the Magistrate Judge's Report and Recommendation. The Magistrate Judge thoroughly considered whether Defendant properly asserted a basis for federal question or diversity jurisdiction and the Magistrate Judge correctly determined that subject matter jurisdiction did not exist. (R&R at 4-7.) And the Court finds no support for Defendant's current allegations that the Magistrate Judge discriminated against Defendant or otherwise violated Defendant's constitutional rights. The Magistrate Judge's Report and Recommendation is affirmed.

D.W.F.